## REMARKS

Upon entry of the foregoing amendment, claims 1-22 are pending for the Examiner's consideration, with claims 1, 14, and 20 being the independent claims. Claims 14 and 20 have been amended herein. Applicants respectfully submit that the foregoing amendments introduce no new matter, and the Examiner is referred in this regard to the specification and claims as originally filed. Applicants acknowledge with appreciation the allowance of claims 1-13, and the indication of allowability for claims 16 and 17.

***Rejection Under 35 U.S.C. § 102(b)***

The Examiner has rejected claims 20 and 21 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,338,931 ("the '931 patent"). Independent claim 20 has been amended herein, thereby rendering this rejection moot. In particular, independent claim 20 has been amended to recite that the first casing portion comprises an inhalation portion that comprises a hemispheric region defining a plurality of apertures. As noted by the Examiner on page 7 of the Office Action as part of the statement of reasons for allowance, "Cavazza [the '931 patent] does not teach a hemispheric region with a plurality of apertures." For at least this reason, Applicants respectfully submit that this rejection cannot properly be maintained for claims 20 and 21 as presented herein, and that claims 20-22 are patentable over the '931 patent.

***Rejections Under 35 U.S.C. § 103(a)***

The Examiner has rejected claims 14, 15, 18, and 19 under 35 U.S.C. § 103(a) as being unpatentable over the '931 patent in view of U.S. Patent No. 6,575,160 ("the '160 patent"). Independent claim 14 has been amended herein, thereby rendering this rejection moot.

In maintaining this rejection, the Examiner disagrees with Applicants' position in the response to the first Office Action filed October 1, 2004 that there is no motivation or suggestion to combine the two patents because of the different structure and mechanism for suspending the powder in the two devices, and that such a combination would destroy the operability of the device disclosed in the '931 patent. The Examiner maintains that the '160 patent is being cited "as a teaching for the specific flow rate and not for the structure or mechanism by which the flow rate is derived." Applicants respectfully disagree with the position of the Examiner as

contrary to Federal Circuit law. As the Federal Circuit has explained, "identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. Rather, to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant." *In re Kotzab*, 217 F.3d 1365, 1370 (Fed. Cir. 2000) (internal citations omitted). Because there is no motivation, suggestion or teaching of the desirability of combining the teachings of the '931 and '160 patents, such a combination is improper, and the Examiner has not established a *prima facie* case of obviousness.

Although Applicants disagree with the position taken by the Examiner in rejecting claims 14, 15, 18, and 19, and do not acquiesce to the propriety of the rejection, Applicants wish to advance prosecution of the instant application. Accordingly, claim 14 as presented herein recites a casing that comprises an inhalation portion that comprises a hemispheric region defining a plurality of apertures. As noted by the Examiner on page 7 of the Office Action as part of the statement of reasons for allowance, "Cavazza [the '931 patent] does not teach a hemispheric region with a plurality of apertures." For at least this reason, Applicants respectfully submit that this rejection cannot properly be maintained for claims 14, 15, 18, and 19 as presented herein.

The Examiner has rejected dependent claim 22 under 35 U.S.C. § 103(a) as being unpatentable over the '931 patent. As noted above with respect to the rejection under 35 U.S.C. § 102(b), independent claim 20 from which claim 22 ultimately depends has been amended herein, thereby rendering this rejection moot. Moreover, independent claim 20 as presented herein recites that the first casing portion comprises an inhalation portion that comprises a hemispheric region defining a plurality of apertures. As noted by the Examiner on page 7 of the Office Action as part of the statement of reasons for allowance, "Cavazza [the '931 patent] does not teach a hemispheric region with a plurality of apertures." For at least this reason, Applicants respectfully submit that this rejection cannot properly be maintained for claim 22 as presented herein.

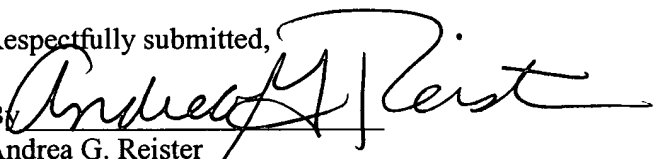
## CONCLUSION

Applicants respectfully submit that the foregoing remarks demonstrate that entry of these amendments places the present application in condition for allowance, and in better form for consideration on appeal. All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Dated: May 23, 2005

Respectfully submitted,

By 

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